FILED

No. 96 596 OCT 15 1996

IN THE OFFICE OF THE CLERK

Supreme Court of the United States

October Term, 1996

CRESCENCIO CISNEROS,

Petitioner,

against

JANET RENO, Attorney General, U.S.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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Questions Presented

Whether Article IV; Section 4; of the Constitution is applicable to maintain standing by a natural born citizen of the United States. When it is published in a court record, that he participated as a witness to maintain due process at an institute of government. When he was denied the right to participate as a lawful witness; and a false accounting tailored to obviate the situs where acts committed led to a homicide. In order to maintain an unlawful conspiracy under color of law.

Whether in New York State where there is a Republican form of government; court records can be fraudulently altered to insert testimony which never occurred. In a homicide case where the evidence of documentation in the petitioner's petition supports the allegation a jury never deliberated to return a verdict in order to obstruct justice and due process.

Whether living conspirators who took part in this farce, can continue to serve as New York State justices at an institute of government. At liberty to duplicate a similar corrupt conspiracy, adverse to the protection of a textured enumerated provision of the Constitution: Article IV; Section 4.

Whether the oppressive conduct at an institute of state government adverse to the Constitution, must be investigated by the government established by the people of the United States to serve the will of the people for a Republican form of government.

Whether the Attorney General of the United States is the appropriate person to fulfill an investigation and prosecution of individuals who have used the power to effectuate oppressive conduct on citizens of the United States; which can be identified

as the oppressive use of political power that deprives the people of the United States to the reasonable conscience of a self governing people at a court of law.

Whether non-feasance by the Attorney General of the United States in effect, sustains conduct adverse to the "guarantee" of Article IV, Section 4; of the Constitution. And the issuance of mandamus on the Attorney General of the United States, to fulfill an obligation to the Constitution, within the purview of her office is the appropriate remedy.

Parties

The Parties to the proceeding are:

1. Crescencio Cisneros, Petitioner.

2. Janet Reno, Attorney General, United States, Respondent.

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No.

IN THE

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CRESCENCIO CISNEROS,

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against

JANET RENO, Attorney General, U.S.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Crescencio Cisneros, respectfully requests that a Writ of Certiorari to be issued to review the opinion of the United States Court of Appeals for the Second Circuit entered in this action on September 14, 1995.

Summary of the Case

Petitioner's father is a homicide victim at a municipal hospital where the autopsy indicates a homicide and is designated as BX. 1016/72.

Petitioner who was a lawful witness of an assault on his father never testified. However, there is a falsely altered record at the Supreme Court of New York in Bronx County which is designated as BX. 1060/72. Among the false facts published, that petitioner was given the opportunity to testify. The "trial" designated as BX. 1060/72 never took place as published.

As the indexed documentation and altered BX. 1060/72 evince a jury did not deliberate to a verdict. The presiding court justice at the original "trial" was among the co-conspirators where there was fraud in the inception and a continuing deception to defraud petitioner's mentally ill brother of his liberty under color of law. Another court record designated BX 1016/72 is expunged and BX. 1060/72 is the "case" which is created to obviate the situs where a homicide took place.

There is a reversal of judgment on appeal. The illegal activity continues and petitioner's brother's unlawful incarceration is covered up.

Petitioner's brother who is still mentally ill is being treated as an out-patient, as a patient whose record reflects the decision published in BX. 1060/72 by State Mental Health hospitals in New York State.

REASONS FOR GRANTING THE WRIT

The institutes of government belong to the People of the United States, and cannot be used against them. As this petition clearly reveals; one of the living persons who participated in a sham where there was no verdict sheet and no deliberation by a jury, and the prevention of testimony to effect due process, continues to administer justice as a chief Administrative Judge in an American court of law.

When an American citizen complains to the proper government authority, which is the Department of Justice. The federal government does not have to investigate an act which is diametrically opposed to Article IV; Section 4; of the Constitution. The citizen brings his petition to the Supreme Court for judicial review as the Constitution is the law of the land, and cannot be dismissed when applicable by the Attorney General of the United States.

Conclusion

For the reasons stated, the Petition for a Writ of Certiorari should be granted.

Dated: October 10, 1996

Respectfully submitted,

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APPENDIX A—Opinion of the United States Court of Appeals for the Second Circuit Granting Motion for Summary Affirmance

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

95-CV-8205
Patterson, J.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventeenth day of July, one thousand nine hundred and ninety-six,

----------X

CRESCENCIO CISNEROS,

Petitioner-Appellant,

96-6107

v.

JANET RENO, United States Attorney General,

Respondent-Appellee.

----------X

United States Court of Appeals
Filed
Jul 17, 1996
George Lange III, Clerk
Second Circuit

The Government having moved for summary affirmance of the district court judgment, upon consideration thereof, it is ordered

that said motion be and it hereby is granted and the appeal is dismissed. The appellant lacks standing to demand that the Government investigate and prosecute other individuals. *See Linda R.S. v. Richard D.*, 410 U.S. 614, 616 (1972).

s/sig
Jon O. Newman

s/sig
Ralph K. Winter

s/sig
Roger J. Miner

s/sig
George Lange III

JON RKW RJM
Issued as Mandate: July 17, 1996

APPENDIX B—Opinion of the United States Court of Appeals for the Second Circuit Denying Petition for a Writ of Mandamus

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Supreme Court Bronx County

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 14th day of September, one thousand nine hundred and ninety-five,

----------X

In Re: CRESCENCIO CISNEROS,

95-3067

Petitioner.

----------X

United States Court of Appeals
Filed
Sep 14, 1995
George Lange III, Clerk
Second Circuit

A petition having been brought herein by petitioner *pro se* for a writ of mandamus, upon consideration thereof, it is ordered that said petition be and it hereby is denied. *See* U.S.C. § 1361 (district courts have original jurisdiction of any action in the

nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff).

A TRUE COPY
GEORGE LANGE III, CLERK
s/George Lange III

s/sig
Jon O. Newman

s/sig
Ellsworth A. VanGraafeiland

s/sig
Fred I. Parker

JON EVG FIP
Sep 14, 1995
Issued as Mandate: 9/14/95

APPENDIX C—Opinion and Order of the United States District Court for the Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CRESCENCIO CISNEROS,

95 Civ. 8205 (RPP)

OPINION AND ORDER

Petitioner,

-v-

JANET RENO,
Attorney General of the United States,

Defendant.

----------X

ROBERT P. PATTERSON, JR., U.S.D.J.

Defendant, Janet Reno, Attorney General of the United States moves to dismiss complaint of petitioner, Crescencio Cisneros ("Cisneros"), pursuant to Rules 12(b)(1) and 12 (b)(6) of the Federal Rules of Civil Procedure. For the following reasons, defendant's motion is granted.

BACKGROUND

Cisneros filed this action on September 26, 1995, seeking a writ of mandamus pursuant to 28 U.S.C. §1361. Cisneros seeks to compel Attorney General, Janet Reno, to investigate the circumstances surrounding the death of petitioner's father and the trial of his brother, Ralph Cisneros.

Petitioner's father died in March 1972. (Petitioner's Submissions. ("Pet.") p. 40.) In December, 1994, Ralph Cisneros was convicted of manslaughter in the first degree for the death of his father. On June 16, 1975, Ralph Cisneros was sentenced to State prison for a maximum of nine years. (Pet. p. 64) Petitioner's brother has apparently completed his term of incarceration and is not a party in petitioner's action.

Petitioner alleges that he witnessed an hospital employee assault his father on the night his father died (Pet. p. 5), but was not permitted to testify about this event at his brother's trial (Pet. pp. 15-17). Petitioner contends that a false version of his testimony was published in an altered transcript of the trial. (Petitioner's Affirmation in Opposition to Government's Motion to Dismiss ("Pet. Oppn.") p. 1.)

Petitioner points out alleged discrepancies in the information regarding the date and time of his father's death which was included in a death certificate completed by the medical examiner and an autopsy report completed by a physician at Morrisania Hospital in the Bronx. (Pet. pp. 5-6). Petitioner portrays these discrepancies as examples of the work of a criminal conspiracy which included judicial officers of New York and the staff of the New York Medical Examiner's office and sought to obstruct justice in his brother's case. (*See e.g.* Pet. pp. 1, 5-7, 18-22.)

Petitioner's exhibits indicate that he has requested and been denied the assistance of the Office of the District Attorney for the Bronx, the Criminal Investigations Divisions for the Attorney General of New York, and the Office of the United States Attorney for the Southern District of New York. (Pet. p. 66.)

DISCUSSION

In accordance with the separation of powers, U.S. Const. art. III, §2, the judiciary will only issue writs of mandamus in limited circumstances. As the Supreme Court has cautioned "the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980). Mandamus jurisdiction arises only where (1) the plaintiff has a clear right to the relief sought; (2) the defendant has a plainly defined and peremptory duty to perform the act in question; and (3) no other adequate remedy is available. *Anderson v. Bowen*, 881 F.2d 1, 5 (2d Cir. 1989) (citations omitted).

Petitioner's papers do not establish an existing duty to petitioner to initiate the investigation sought. A private citizen, like petitioner, "lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). Such matters are within the discretion of the prosecutorial authority. *Otero v. United States Attorney General*, 832 F.2d 141 (11th Cir. 1987); *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375, 379 (2d Cir. 1973); *United States v. Cox*, 342 F.2d 167 (5th Cir. 1965), *cert. denied*, 381 U.S. 935 (1965). *See also Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

Furthermore, the judiciary is only permitted to determine actual cases and controversies, U.S. Const. Art. III, §2, and the doctrine of standing is a means of implementing this requirement. *In re Appointment of Independent Counsel, Schiavone v. U.S.*, 766 F.2d 70, 72 (2d Cir. 1985) (plaintiffs seeking the appointment of independent counsel to investigate whether government informant had given false evidence before a grand jury lacked standing because their injury was not traceable to government's failure to prosecute informant); *see also Allen v.*

Wright, 468 U.S. 737, 750, 104 S. Ct. 3315, 3324, 82 L.Ed.2d 556 (1984).

In order to demonstrate that a plaintiff has standing, he must establish that: (1) he has suffered a "distinct and palpable injury," *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100, 99 S. Ct. 1601, 1608, 60 L.Ed.2d 66 (1979) (citations omitted); (2) the injury "fairly can be traced back to the challenged action," *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41, 96 S. Ct. 1917, 1925, 48 L.Ed.2d. 450 (1976); and (3) it is likely that a favorable court decision would redress plaintiff's injury, *Valley Forge v. Americans United*, 454 U.S. 464, 472, 102 S. Ct. 752, 758 (1982).

Petitioner alleges injuries to his brother and his father and contends that he was injured when he was denied the right to testify. Petitioner has not shown, however, that this injury can be traced to the present refusal of the Attorney General to investigate petitioner's allegations. Nor has petitioner shown that an order compelling an investigation would redress the injury about which he complains. Thus, plaintiff has failed to meet the threshold requirement of demonstrating standing.

CONCLUSION

The petitioner has not shown that mandamus jurisdiction exits or that he has standing. Therefore, this Court lacks subject matter jurisdiction over petitioner's claims and defendant's motion to dismiss is granted pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: New York, New York
January 17, 1996

s/Robert P. Patterson, Jr.
Robert P. Patterson, Jr.
U.S.D.J.

Copies of this Opinion and Order sent to:

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FILED OPINION
U.S. DISTRICT COURT
1996 JAN 19 A 9:34
SOUTHERN DISTRICT
OF NEW YORK